

SANTA BARBARA COUNTY

LOCAL FISHERMEN'S CONTINGENCY FUND

*** GUIDELINES ***

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LOCAL FISHERMEN'S CONTINGENCY FUND

1. BACKGROUND AND PURPOSE OF THE LOCAL FISHERMEN'S CONTINGENCY FUND

Environmental Impact Reports/Statements (EIR/S) for offshore oil and gas development projects in the Santa Barbara region have identified potential impacts to the commercial fishing industry. Structures associated with the exploration, development, and production of offshore oil and gas resources can result in costly damage and loss of fishing gear. To partially mitigate the impacts associated with gear loss and damage due to offshore oil and gas development, the County of Santa Barbara has placed a permit condition on four major projects (Exxon Santa Ynez Unit, Union Pt. Pedernales, Chevron Pt. Arguello, and the Gaviota Terminal Company (GTC) Marine Terminal) to require the applicants to contribute to the development and implementation of a Local Fishermen's Contingency Fund (the Local Contingency Fund).

The Local Contingency Fund is proposed as a complement to the Federal Fishermen's Contingency Fund, which was established by the Outer Continental Shelf Lands Act Amendments of 1978, to assist fishermen who incur gear loss or damage as a result of Outer Continental Shelf (OCS) oil and gas development activity. Under the Federal Fund, it can take up to seven months for fishermen to receive payments on approved claims, which can result in costly down-time for fishermen without the capital to repair or replace their gear.

In addition, under the Federal Fund it is only possible to obtain reimbursement for loss or damage which occurs in Federal waters. For loss or damage occurring in State waters, a fisherman must prove that the damage is due to a Federal project. To date, this has been difficult for fishermen to prove directly, and the State of California has not developed a contingency fund for incidents which occur in State waters. For all the above reasons, the mechanism available to fishermen is not fully responsive to all types of situations which may be encountered.

The Local Contingency Fund has been designed to establish a quick and effective mechanism to aid commercial fishermen who have incurred gear loss or damage as a result of obstructions related to oil and gas development or production activities in both Federal and State waters.

The Local Fund will serve as an interest-free loan to fishermen who file for damages with the Federal Fishermen's Contingency Fund. For casualties in Federal waters, the Local Fund will only loan fishermen the amount necessary to replace the lost or damaged gear.

The Local Fund will not provide reimbursement for any economic loss for lost fishing time while awaiting claim payment from losses either in Federal or State waters. Money to cover lost profits may be recovered only directly through the Federal Fund.

Thus, the Local Fishermen's Contingency Fund was designed to have two main functions:

- 1) To act as a loan program to provide speedy equipment repair and/or replacement to fishermen while they wait for payment on Federal Contingency Fund claims for damage and/or loss which occurs as a result of Federal OCS development or production activities; and
- 2) To reimburse fishermen for damage or loss of gear, not covered under the Federal Fund, which occurs in State waters due to Federal or State oil and gas development or production activities.

2. SOURCE OF THE FUND

2.1 Funding

As required by the County's permit condition, the oil and gas companies will contribute money to administer the Local Contingency Fund and pay all eligible claims to the Fund. It is difficult to determine the exact number of claims which will result from the expected increase in offshore development and production. However, based on historical data from the Federal Fishermen's Contingency Fund and the number of offshore structures proposed, it is estimated that up to 40 claims per year could be filed with the Local Contingency Fund.

The maximum allowable claim from the Local Contingency Fund will be \$5,000 per claim. (The State of Louisiana also uses a \$5,000 maximum claim for each incident on its Contingency Fund, and the average claim to the Federal Fund is approximately \$5,200.) Therefore, using a "worst-case" analysis, the calculation for the estimated initial costs assumes 40 claims per year at a maximum of \$5,000 per claim to be paid from the Fund. Thus, a total of \$200,000 per year should be in the Fund to cover estimated claims and approximately \$50,000 per year for the administrative costs, for an expected operational cost of \$240,000 per year. The administrative costs include the cost of liability insurance, a fidelity bond, and operating expenses for the Joint Committee and the County's cost for Fund implementation. Based on the current number of five structures, each participant will be expected to initially contribute approximately \$50,000 per structure to the Local Contingency Fund.

At the beginning of each Fiscal Year (FY), participants in the Local Contingency Fund will be required to replenish the Fund to the level necessary to implement the Fund for the next year. If the Fund's cash balance falls below \$75,000 prior to the one-year mark, participants in the Local Contingency Fund condition will replenish the Fund to \$125,000.

LOCAL FISHERMEN'S CONTINGENCY FUND

Project	# of Structures	FY 1987/88
Union Pt. Pedernales	1	\$ 49,900
Chevron Pt. Arguello	3	\$149,700
Gaviota Interim Marine Terminal	1	<u>\$ 49,900</u>
TOTAL	5	\$249,500

Based on historical numbers, the number of offshore structures proposed, and a calculation of expected claims and administrative costs for a one-year period, each offshore structure associated with a permitted facility will be initially assessed \$49,900. New projects will also be assessed an initial fee of \$49,900 per structure. Thereafter, the participating companies will be assessed an additional per structure fee required to maintain the Fund. A "Structure" is defined as a single platform or subsea completion and associated pipelines, or a marine terminal or supply base and associated facilities.

The company will enter into an agreement, shown in Attachment A, for fee payment.

When the program expires, any funds not used will be returned to the participating companies on a pro-rata basis as determined by the Board of Supervisors.

3. ELIGIBLE APPLICANTS AND USES OF THE FUND

3.1 Eligible Applicants

Only commercial fishermen operating in the Santa Barbara Channel or Santa Maria Basin, who have lost or damaged fishing gear as a result of oil and gas development or production activities may submit a claim to the Local Contingency Fund. To be eligible to make a claim against the Local fund, the following requirements must be met:

- o The claimant must be able to prove that he/she is an active commercial fisherman;
- o The claimant must have made all reasonable efforts to identify, locate and collect reimbursement from the company responsible for the damages;
- o The damage/loss must not have been caused by negligence or fault of the commercial fisherman making the claim; and
- o The damage/loss must not be compensable by insurance.

3.2 Eligible Uses

The Special Revenue Fund shall be used for two purposes:

- 1) For losses which occur as a result of Federal OCS projects, the Fund will serve as an interest-free loan to fishermen for the amount necessary to replace or repair gear, while they wait for their Federal claims to be processed.
- 2) For fishermen who incur gear damage or loss in State waters (within the 3-mile limit) due to oil and gas activities not covered under the Federal Fund, the Local Contingency Fund will be used to reimburse fishermen to replace or repair the gear.

The Local Fund will not provide reimbursement for any economic loss for lost fishing time while awaiting claim payment from losses either in Federal or State waters. Money to cover lost profits may be recovered only directly through the Federal Fund.

4. ADMINISTRATION OF THE FUND

4.1 Administration Through an Independent Insurance Adjuster and the Oil/Fisheries Liaison Office

To administer the Fund, the County proposes to contract the services of an independent insurance adjuster bonded and insured for such services. To support the commercial fishing industry-specific technical review process by the adjuster, the County proposes to contract for up to half-time, the services of a staff person operating under the guidance of the Joint Oil/Fisheries Liaison Office. The Liaison Office is an existing inter-industry communications and conflict resolution service established in Santa Barbara in 1983 by the oil and fishing industries. The County proposes to contract with the existing Liaison Office Director for advisory services in support of both

the insurance adjuster and staff person.

This administrative structure will allow the Local Contingency Fund to capitalize on the claims processing expertise of an experienced claims adjuster, as well as the technical knowledge base of the existing Liaison Office in support of the claims review process. This will result in an efficient and credible Local Contingency Fund. The contract service fee for the insurance adjuster (per-claim basis), staff person, and Liaison Office Director (annual bases) will be drawn from the Fund.

The responsibilities and duties of the insurance adjuster, with technical assistance from Liaison Office staff, will include:

- o Aid fishermen in determining if an oil company is responsible for the damage, and in cases where the damage or loss is not attributable to the operations of a particular company or if a claim referred to an oil company is denied, the insurance adjuster and the Liaison Office staff person will assist fishermen in making claims to the Federal and Local Contingency Funds;
- o Review claims as they are filed;
- o Forward the decision to approve or deny the claim to the claimant and the County;
- o Inspect the damage to gear, whenever possible;
- o Determine the location of debris through the claim process, if possible, and contact the appropriate party to initiate cleanup, if feasible;
- o Prepare quarterly reports to the County Resource Management Department; and
- o Advise on procedural changes which could streamline the process and/or increase its efficiency.

It is anticipated that the services of an insurance adjuster to process 40 claims in the first year, with the technical support of a part-time staff person working through the Liaison Office, will be required to conduct the duties outlined above. Thus, the County proposes that the Local Contingency Fund contract the services of the insurance adjuster, support up to one-half of the yearly contract services fee of a Liaison Office staff person, and contract with the Liaison Office Director for technical support of the insurance adjuster claim review process.

4.2 Management of the Fund

The Local Contingency Fund monies will be deposited with the County of Santa Barbara and will be designated as a Special Revenue Fund in the County treasury. Fund balances will earn interest based on the prevailing County treasury rate; all interest will go back into the Fund. All Fund monies will be appropriated and expended in accordance with County budgetary authority.

The annual estimated operating costs of the program and claims will be paid from the Fund. Under the program, the County will authorize the insurance adjuster to establish a revolving fund on which it will be authorized to pay claims. This system would provide the mechanism to get the fishermen their loan or reimbursement, once a decision is made on a claim. The insurance adjuster will provide the County quarterly reports detailing the claims paid from the revolving fund, so that it can be reimbursed to its authorized level.

Administrative expenses will be paid to the insurance adjuster and the Liaison Office based on the contract agreement between the County and these parties. The Auditor-Controller and the Resource Management Department shall have the right to review the claim process and the administration of the fund every six months for the first two years of operation and then every two years for the life of the program. Changes deemed necessary to improve the effectiveness or efficiency of the fund or fund administration may be implemented by the County after any of the periodic reviews.

5. CLAIM FILING PROCEDURES

5.1 Filing Claims to the Local Fishermen's Contingency Fund

If a fisherman incurs equipment damage/loss which he feels may be due to oil and gas development or production, he must fill out two forms for the Local Fishermen's Contingency Fund, regardless of whether the loss occurred in Federal or State waters (see attached forms). The first form is a Preliminary Report which establishes a presumption of causation and must be submitted within 15 days of the damage/loss. The second form is the Final Report which must be completed within 90 days of the accident and requires additional information and detail regarding the damage/loss.

Fishermen who incur damage/loss thought to be related to an OCS project must simultaneously apply to the Federal Fund (National Marine Fisheries Service Regional Office). The Liaison Office staff person will be available to assist fishermen in filing the correct forms and assembling acceptable evidence.

5.2 Preliminary Report

The claim procedures for the Local Contingency Fund will be similiar to the Federal Fund. As with the Federal Fund, claimants to the Local Contingency Fund will be required to file a Preliminary Report within 15 days of the damage/loss. The Preliminary Report will be used to establish a "presumption of causation" (see attached form). A Preliminary Report must be filed to be elgible for a claim from the Local Contingency Fund.

5.2.1 Content of Preliminary Report

The preliminary report is a brief description of events:

- o Name of the fisherman filing the claim,
- o Kind of damage that occured or what was lost,
- o Where and when it was lost, and
- o The name of the fishing vessel, and if it is damaged, in what way.

5.2.2 Presumption of Causation

The preliminary report is designed to determine presumption of causation that the damage/loss was related to oil and gas development or production activities. To qualify for a presumption of causation, a claimant must also meet the following four conditons:

- 1) The fisherman must be commercially fishing at the time the damage/loss occurred.
- 2) The damage/loss must have occurred within a 3-mile radius of any portion of a leased block, pipeline, easement, Right-of-Way, or other oil and gas activity.
- 3) The damage/loss must not have occurred as a result of material or obstruction on the most recent nautical charts or in the notice to mariners. This does not apply to casualties caused by pipelines, which may be valid claims whether or not they were charted or in the notices.
- 4) There must be no proper surface marker or lighted buoy at the damage/loss.

After filing a Preliminary Report and meeting the four conditions above, a damage/loss will be presumed to have been caused by oil and gas development or production activity.

If the claimant cannot submit the preliminary report in person, the necessary information may be given over the phone to the insurance adjuster, where the form will be completed and signed later by the claimant.

Satisfaction of the 15-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or by the date of appearance, if the report is made in person.

5.3 Final Report

A Final Report must also be completed and filed with the Local Office; for claims related to OCS projects a Final Report must also be submitted to the Federal Fund. The Final Report must be mailed within 90 days of the date of the damage/loss (or submitted in person) and include all the pertinent, required information.

5.3.1 Content of Final Report

The final report includes detailed information on:

- o The specific location of the accident, including Loran C coordinates and/or longitude and latitude, and distances and directions from oil and gas structures or landmarks,
- o How the damage/loss occurred (what happened) and the assumed cause,
- o Type and extent of damage/loss,
- o Description of what was lost or damaged,
- o Proof of ownership; for all gear lost or damaged, receipts, pictures, or other reasonable proof of ownership must be provided,
- o Evidence of being an active commercial fisherman,
- o Eyewitness accounts (include witness statements, if there are any),
- o Estimates or receipts for repair or replacement of the property lost or damaged, and
- o Other supporting documentation, including pictures.

The final report for the Local Contingency Fund is more expansive

than the preliminary report, and should be filled out on the Local Fund form.

Without the information outlined above, claims cannot be processed. If a form is incomplete, a response will be sent to the claimant requesting the additional information, which must be returned within 30 days.

5.3.2 Proof of Eligibility

The final report requests proof that the claimant is an active commercial fisherman. Consistent with the Federal Contingency Fund, fishermen will be required to state that they own or operate a commercial fishing vessel and supply the Department of Fish and Game or United States Coast Guard Certificated Vessel registration number of that vessel and a copy of his commercial license. In addition, fish tickets, which prove that at least \$5,000 was brought in the previous year from commercial fishing must be provided. Confidential data on the fish ticket may be deleted prior to submitting them. The insurance adjuster, with technical assistance from the Liaison Office staff person, will determine if a claimant is an active commercial fisherman. All information submitted to the insurance adjuster and the Liaison Office will be kept confidential.

New commercial fishermen need only prove that they are in their first year of operation. Proof of being an active commercial fisherman must be re-established for other claims every three years in the same manner.

5.4 Claims Related to Federal OCS Activities

For damage related to Federal activities, a Federal claim must be filed simultaneously with the National Marine Fisheries Regional Office and the Local Fund Office. The Local Contingency Fund Preliminary Report is identical to the Federal Fund 15-Day report. A photo-copy of the Federal form may be submitted in place of the Local Preliminary Report form. If the Local Contingency Fund Preliminary Report form is used, a photo-copy of the Federal form should be attached. The Final Report must also be submitted to both offices within 90 days of the damage/loss.

5.5 Claims for Loss/Damage Which Occurs in State Waters.

The Local Contingency Fund has also been established to provide a mechanism for reimbursing fishermen for gear loss or damage occurring in State waters not covered by the Federal Fund. This portion of the Local Contingency Fund is not a loan system, rather all payments made for damage/loss in State waters are final and need not be reimbursed, unless damage/loss can be proven to be

related to an OCS project and the Federal Fund reimburses the claimant.

To apply for reimbursement for damage/loss which occurred in State waters, not directly related to a OCS project, the claimant must still file a preliminary report within 15 days of the incident to determine presumption of causation.

After filing the preliminary report, the claimant must attempt to contact the party financially responsible for the operations or equipment which caused the damage or loss, to request direct reimbursement. If no responsible party can be found, or none provides payment, the applicant may then apply to the Local Fund by completing a Final Report within 90 days of the incident.

If the damage/loss may be related to an OCS project, the claimant must simultaneously apply to the Federal Fund; if the federal claim is approved, the claimant must reimburse the County.

6. REVIEW OF CLAIMS

6.1 Claims Review

After a claim is deemed complete, insurance adjuster will review the claim. Based on the criteria outlined in Section 6.3, the insurance adjuster, with technical assistance from the Liaison Office staff person, will review the claim and make a decision within ten working days. The insurance adjuster will forward the decision to approve or deny the claim to the claimant and the County, within five working days.

6.2 Criteria for Eligible Claims

Damages or losses will be qualified for compensation if certain requirements are satisfied. Criteria for claims to the Local Contingency Fund are similar to the criteria used for the Federal Fund. For claims associated with OCS projects, the claimant must prove that the damage or loss is related to a Federal oil and gas activity. For damage or loss which is related to State projects, the Local Contingency Fund has expanded on the Federal criteria to allow a claimant to be eligible for compensation, if the item which caused the damage or loss can be associated with oil and gas activities in State waters.

6.2.1 Claim Review Criteria

The insurance adjuster, with the assistance of the Liaison staff person will review the Preliminary and Final Reports and determine if they are complete. Once a claim is deemed complete, the

insurance adjuster with technical assistance from the Liaison Office, will determine if the following criteria have been met:

- 1) The claimant must fulfill the eligibility requirements set forth in Section 3.1.
- 2) The claimant must establish that the damage/loss was related to either Federal or State offshore oil and gas development or production activities. If a Preliminary Report was filed, damages/losses are to be presumed to be caused by oil and gas activities if a claimant meets the following four conditions:

The fisherman must be commercially fishing at the time the damage/loss occurred.

The damage/loss must occur within a 3-mile radius of any portion of a leased block, pipeline, easement, Right-of-Way, or other oil and gas activity.

The damage/loss must not occur as a result of material or obstruction on the most recent nautical charts or in the notice to mariners. This does not apply to casualties caused by pipelines, which will be valid claims whether or not they were charted or in the notices.

There must be no proper surface marker or lighted buoy at the damage/loss.

The insurance adjuster, with technical assistance from the Liaison Office staff person, will review the Final Report and determine if the damage/loss resulted from operator negligence, if the claimant has receipts or adequate proof of ownership for the property lost or damaged, and if other information describing the incident is adequate and factual. The insurance adjuster will make a decision to approve or deny the claim within 10 working days of submittal of a complete claim.

6.2.2 Criteria for claims associated with Federal OCS projects

The insurance adjuster's decision for claims associated with Federal OCS activities will be based on the likelihood that the claim, simultaneously filed with the Federal Contingency Fund, will be approved by the Federal Fund. If information is lacking in the claim, the claim may be denied based on the probability the Federal Fund will similarly deny the case.

6.2.3 Coordination with Federal Fund

Fishermen who are loaned money will be required to sign a reimbursement agreement which will give the insurance adjuster the authority to receive notification when the claimant has received his federal reimbursement. Fishermen must reimburse the Local Contingency Fund when a decision is made on their Federal Fishermen's Contingency Fund claim, whether the Federal claim is approved or denied. The claimant shall be held financially responsible if the Federal Contingency Fund reimbursement is less than the amount awarded from the Local Contingency Fund.

If a Federal claim is denied, the insurance adjuster will seek direct reimbursement of the loan amount from the claimant. It will be the responsibility of the insurance adjuster to make all due and diligent collection efforts on the loan. As a last resort, the account will be turned over to the County for collection.

The claimant's financial responsibility shall be considered a no-interest loan and shall be reimbursed to the Fund within 30 days of the Federal Fund decision.

6.3 Amount of a Claim

The amount of a claim shall be equal to the repair cost of the gear if repair cost is less than the gear's replacement cost. If the gear is not repairable, the amount of the claim should be the cost of replacement gear, of comparable size, quality, and construction. If the gear is lost, the amount of the claim will be the cost of replacing the gear.

Awards will not be made for lost profits or time associated with the gear damage or loss. The program is designed to allow a claimant to resume normal fishing operations as promptly as possible.

7. APPEALS PROCESS

Appeals Process

The insurance adjuster's final decision to deny a claim will be appealable to an Appeals Board, made up of members from the Joint Committee. The Joint Committee's decision may be ultimately appealed to the Board of Supervisors. The claimant must demonstrate to the Joint Committee Appeals Board that the damage/loss is related to oil and gas activities and the following criteria must be fulfilled before an appeal may be filed:

1. A claim must have been deemed complete by the insurance

adjuster, and

2. The eligibility requirements in Section 3.1 must be fulfilled.

To minimize the time involved with the appeals process, the insurance adjuster will mail the Preliminary and Final Reports to the Joint Committee Appeals Board. Based on the criteria set out in these guidelines, the Appeals Board will make a final determination on the claim and send their decision to the insurance adjuster within 10 working days. The Joint Committee's decision may be appealed to the Board of Supervisors.

8. FRAUD

Fraud

Any false claims made to the Local Fishermen's Contingency Fund are subject to court litigation, and the claimants of false reports may be prosecuted for theft, grand theft, and fraud or any other relevant cause of action. Any information which is knowingly presented as false may result in prosecution. Similarly, claims filed with the Local Contingency Fund for any lost or damaged equipment or gear which is also covered by an insurance policy will be considered fraudulent and subject to litigation. All legal fees resultant from decisions related to the Local Fund will be paid by the project applicants (oil companies), as stipulated in the conditions of their projects.

